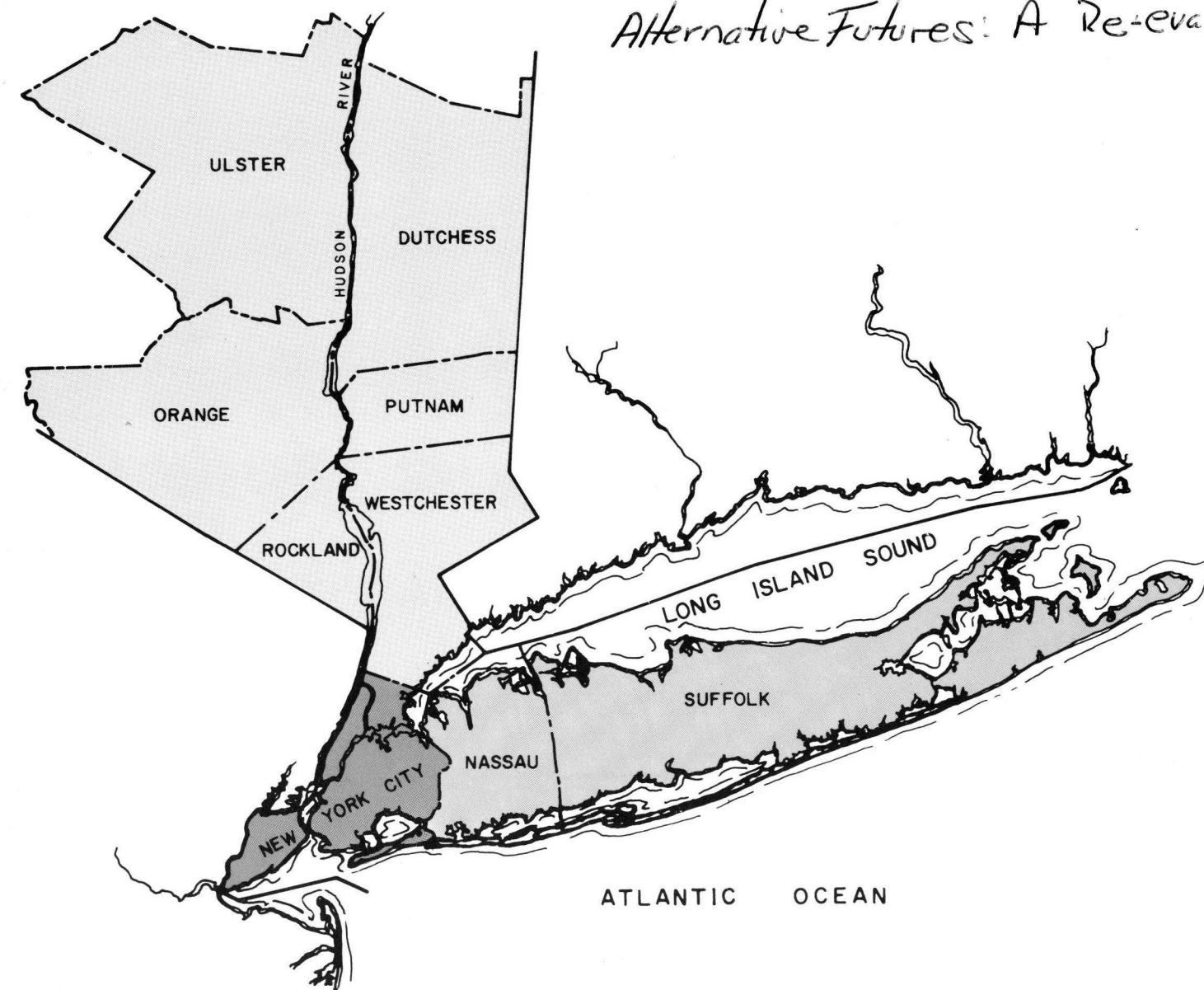


TEMPORARY STATE COMMISSION
ON THE
WATER SUPPLY NEEDS
OF
SOUTHEASTERN NEW YORK

Alternative Futures: A Re-evaluation



November 15, 1974

Albany, New York

§ 1137. *Rights and remedies preserved.* 1. *No existing right or remedy of any character shall be lost or impaired or effected, nor shall any new right or remedy of any character accrue to the benefit of any person, except as specifically provided by this chapter, by reason of the creation and establishment of the district and corporation.*

2. *All rules, regulations and acts, decisions, determinations and orders pertaining to the functions herein continued, transferred, assigned or devolved, in force or effective at the time of such designation, transfer, assignment or devolution shall continue in force and effect as rules, regulations, acts, decisions, determinations and orders of the corporation until modified or abrogated.*

3. *All rights, obligations, debts, liabilities, conditions, covenants, pledges, undertakings and commitments, including those contained in conveyances, leases, subleases, bonds, notes or agreements to, from, or with any municipality, are hereby transferred and assigned to, assumed by and devolved upon the corporation, created by this title, and shall continue to be rights, obligations, debts, liabilities, covenants, conditions, pledges, undertakings and commitments of such corporation without diminution or impairment.*

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contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the corporation or other officer designated for such purpose and that the corporation has neglected or refused to make an adjustment or payment thereof.

2. An action against the corporation founded on tort shall not be commenced more than one year after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been served on the corporation within the time limited by and in compliance with all the requirements of section fifty-e of the general municipal law.

3. The corporation may require any person, presenting for settlement on account or claim for any cause whatever against the corporation, to be sworn before a director, counsel or an attorney, officer or employee of the corporation designated for such purpose, concerning such account or claim and when so sworn to answer orally as to any facts relative to such account or claim. The corporation shall have power to settle or adjust all claims in favor of or against the corporation.

4. The rate of interest to be paid by the corporation upon any judgment for which it is liable shall not exceed four per centum per annum.

§ 1136. Title not affected if in part unconstitutional or ineffective. If any provision of any section of this title or the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section of this title or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of this title are hereby declared to be severable.

subject to the provisions of this section.

6. The terms "taxation," "special ad valorem levies," "special assessments" and "assessing unit" shall have the same meanings as set forth in section one hundred two of the real property tax law.

7. Notwithstanding any provision to the contrary in this section, in view of the costs of governmental services being provided by public corporations, as defined in the general corporation law, the corporation may pay or may enter into agreements with any public corporation to pay, a sum or sums, annually or otherwise, or to provide other considerations to such public corporation with respect to real property owned by the corporation within the boundaries of such public corporation and used for any project or projects.

8. The corporation shall be required to pay no fees or taxes, whether state or local, including but not limited to fees or taxes on real estate, franchise taxes, sales taxes or other excise taxes, upon any of its property, real or personal, or upon the use thereof, or upon its activities in the operation and maintenance of its facilities or on any rentals, rates, charges or other fees, revenues or other income received by the corporation and that the bonds and notes of the corporation and the income therefrom shall at all times be exempt from taxation, except for gift and estate taxes on transfers. Nothing contained in the subdivision shall effect the obligation imposed by this section on the corporation to make in lieu payments.

9. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by the corporation.

§ 1135. Actions against the corporation. 1. As a condition to the consent of the state to such suits against the corporation, in every action against the corporation for damages, for injuries to real or personal property or for the destruction thereof, or for personal injuries or death, the complaint shall

TEMPORARY STATE COMMISSION
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A L T E R N A T I V E F U T U R E S : A R E - E V A L U A T I O N
NOVEMBER 15, 1974

MALCOLM WILSON
Governor

WARREN M. ANDERSON
Temporary President of the Senate

PERRY B. DURYEA
Speaker of the Assembly

NOVEMBER 15, 1974
ALBANY, NEW YORK

SOUTHEAST WATER SUPPLY COMMISSION

E. Virgil Conway, Chairman
H. Clark Bell, Vice Chairman

George J. Farrell, Jr.	Anthony M. Quartararo
Herman Forster	Gerald R. O'Brien
Albert F. Gordon	Jay P. Rolison
Louis Ingrassia	John J. Santucci, Jr.
Norman Levy	William J. Schickler
Jess J. Present	

Robert D. Hennigan, Executive Director

The determinations of the full value and the ratio of assessed value to full value shall be determined by the state board:

(d.) in no instance shall the payments made in lieu of taxes by the corporation to local municipalities be less than the taxes paid in the last fiscal year by the city of New York to the local municipalities prior to transfer of the facilities from the city of New York to the corporation.

4. Application for an approved assessed valuation shall be made by the assessor of the assessing unit within which such property is located. Application shall be made as soon as practicable after acquisition of such property by the corporation. The application shall be made on a form approved by the state board of equalization and assessment and shall contain such information as such board shall require.

5. Upon approval of such application by the state board the state board shall certify such approved assessed valuation to the assessing unit and to the corporation. The approved assessed valuation shall be entered by the assessor or other local official on the assessment roll with the notation that such property is exempt from taxation, special ad valorem levies and special assessment but qualifies for payments in lieu of taxes, special ad valorem levies and special assessments pursuant to this section. The approved assessed valuation and taxable full valuation on the assessment roll for which it is made. Amounts shall be extended against such approved assessed valuation in the same manner and at the same time as taxes, special ad valorem levies or special assessments are extended against taxable property. The appropriate collecting officer shall transmit a statement of the amounts computed as payable as in lieu of taxes, special ad valorem levies and special assessments to the corporation. The provisions of any general or special law relating to the collection and enforcement of taxes shall not be applicable to property

1. It is hereby found, determined and declared that the creation of the corporation and the carrying out of its purposes is in all respects for the benefit of the people of the state of New York and for the improvement of their health, welfare, and prosperity and is a public purpose, and that the corporation will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.

2. Real property owned by the corporation which was subject to taxation, special ad valorem levies, or special assessments on the latest assessment roll finally completed, verified and filed preceding the date of acquisition thereof by the corporation shall be subject to payments in lieu of taxes, special ad valorem levies and special assessments by the corporation in accordance with the provisions of this section.

3. The in lieu payments shall be computed and determined annually by the state board of equalization and assessment as follows:

(a.) for the purposes of this section, the term "base year" shall mean the earlier of; the last full calendar year prior to the creation of the corporation herein, or the last full calendar year prior to the acquisition of the property by the corporation.

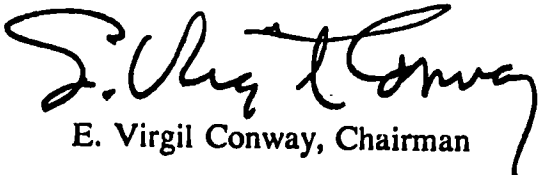
(b.) the full value of such property shall be the assessed valuation shown on the assessment rolls for the base year divided by the applicable equalization rate for the base year as determined by the state board of equalization and assessment, provided, however, that the value of any improvements constructed upon the property by the corporation shall be excluded in determining full value.

(c.) the approved assessed valuation for such property in any year shall be the full value determined in item (b) above, multiplied by the ratio of assessed value to full value of other property on the same assessment roll, for the same year.

FOREWORD

This supplemental report is the result of several months of Commission conferences with parties of interest throughout the Southeast New York Region at which reactions and suggestions were given relative to the Commission's legislative program. The report builds upon the Commission's final reports and the study bill S.9611-A.11697, which was introduced to the State Legislature in March 1974.

The report re-evaluates alternative institutional water supply arrangements for the region. It details revisions which have been incorporated into the Commission's preferred arrangement, a regional water facilities corporation. It also updates the status of other pieces of Commission legislation relative to universal metering, stream release requirements and private water and sewage works corporations.


E. Virgil Conway, Chairman

COMMISSION STAFF

Robert D. Hennigan, Executive Director
Harrie C. Patrick, Special Counsel
Evan D. Richert, Administrative Assistant
Margaret Bonanno, Secretary
Mary Sanborn , Secretary

FORMER COMMISSION STAFF

Paul W. Merkens, Director of Engineering Studies and Analysis
Stephen C. Lackey, Assistant Director of Engineering
Harold F. Breon, Water Resources Engineer
David E. Buerle, Director of Management Studies and Analysis
Karen M. McMahon, Secretary

3. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

4. The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The venue of any such suit, action or proceeding shall be laid in the county of Albany.

5. Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty days' notice in writing to the attorney general of the state.

§ 1133. Notes and bonds as legal investment. The notes and bonds of the corporation are hereby made securities in which all public officers and bodies of the state and all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, all bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the corporation are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

§ 1134. Exemption from taxation; payments in lieu of taxes.

with the holders of any issue of notes or bonds, the holders of twenty-five per centum in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Albany and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such notes or bonds then outstanding shall, in his or its own name;

(a) by suit, action or proceeding in accordance with the civil practice law and rules, enforce all rights of the noteholders or bondholders, including the right to require the corporation to collect rentals, rates, charges and other fees and to collect interest and amortization payments on municipal bonds and notes and bonds and notes of any state agency held by it adequate to carry out any agreement as to, or pledge of, such rentals, rates, charges and other fees and of such interest and amortization payments, and to require the corporation to carry out any other agreements with the holders of such notes or bonds and to perform its duties under this title;

(b) bring suit upon such notes or bonds;

(c) by action or suit, require the corporation to account as if it were the trustee of an express trust for the holders of such notes or bonds;

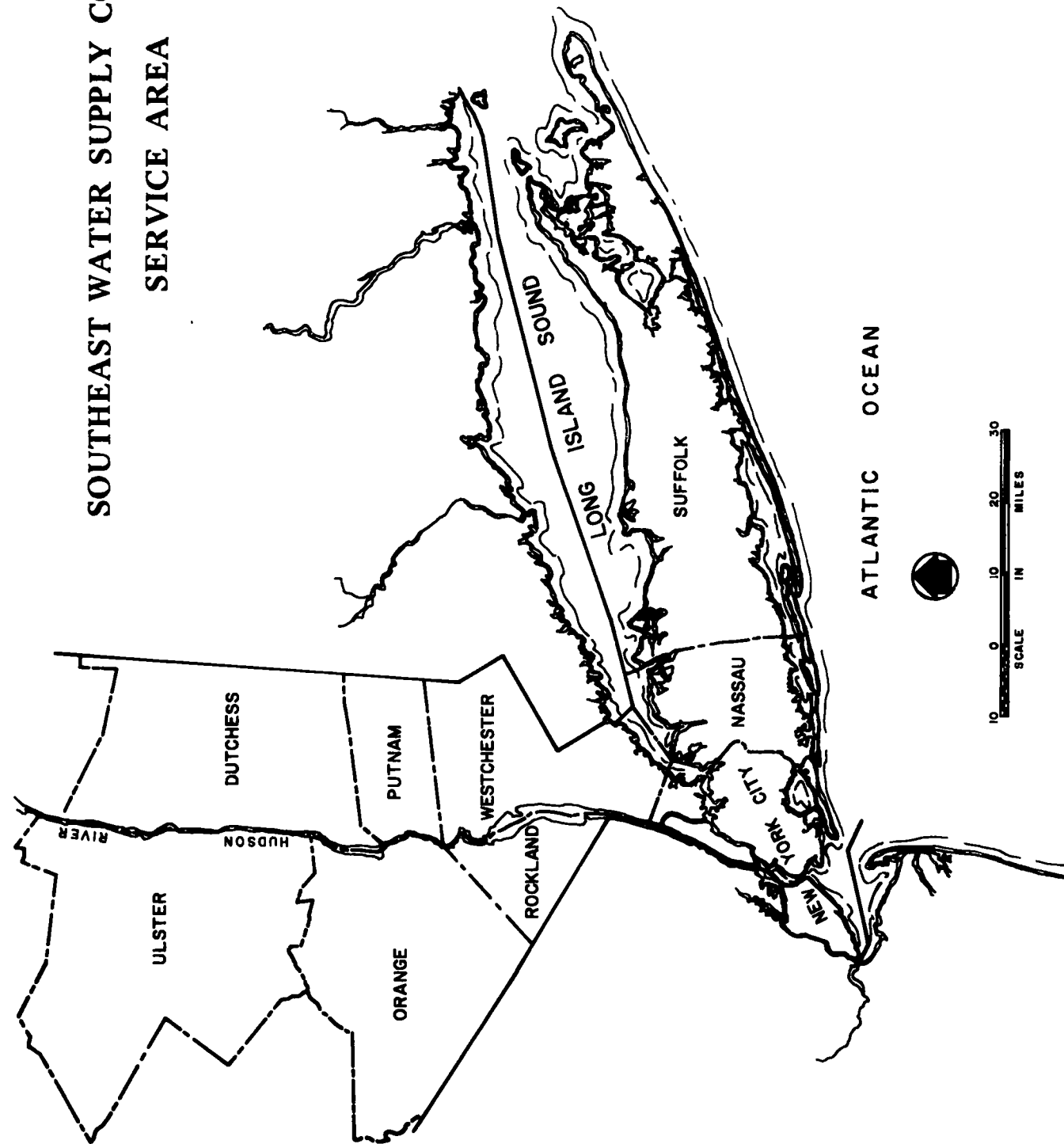
(d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;

(e) declare all such notes or bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of twenty-five per centum of the principal amount of such notes or bonds then outstanding, to annul such declaration and its consequences.

TABLE OF CONTENTS

Title Page	
Commissioners	
Foreword	
Commission Staff	
Table of Contents	
Commission Service Area	
INTRODUCTION	1
A PREFACE ON THE REGIONAL APPROACH	3
ALTERNATIVES RE-EVALUATED	7
Muddle Through	7
New York City as Regional Supplier	8
State as the Regional Agency.	11
A New Regional Corporation	12
Combination	21
Implementing Agency	21
FEDERAL AID	23
OTHER LEGISLATION	27
Universal Metering	27
Environmental Feasibility Reports	27
Stream Releases	27
Private Water and Sewage Works	28
Excess Release Requirement.	28
SUMMARY AND CONCLUSIONS	30
APPENDIX (Redraft of Regional Corporation Legislation)	

**SOUTHEAST WATER SUPPLY COMMISSION
SERVICE AREA**



§ 1130. Agreement of the state. The state does hereby pledge to and agree with the holders of any notes or bonds issued under this title, that the state will not limit or alter the rights hereby vested in the corporation to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of such holders until such notes or bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the corporation is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

§ 1131. Right of state to require redemption of bonds. Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds, the state may, upon furnishing sufficient funds therefor, require the corporation to redeem, prior to maturity, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published in at least two newspapers publishing and circulating respectively in the cities of Albany and New York at least twice, the first publication to be at least thirty days before the date of redemption.

§ 1132. Remedies of noteholders and bondholders. 1. In the event that the corporation shall default in the payment of principal of or interest on any issue of notes or bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the corporation shall fail or refuse to comply with the provisions of this title or shall default in any agreement made

then in such debt service reserve fund, will be not less than the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds then to be issued and on all other bonds of the corporation then outstanding and secured by such debt service reserve fund.

3. To assure the continued operation and solvency of the corporation for the carrying out of the public purposes of this title provision is made in subdivision one of this section for the accumulation in each debt service reserve fund of an amount equal to the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year as determined by the corporation on all bonds of the corporation then outstanding and secured by such debt service reserve fund. In order further to assure the maintenance of such debt service reserve funds in the respective amounts provided therefor by the corporation in the issuance of its bonds secured thereby, there shall be annually apportioned and paid to the corporation for deposit in each such debt service reserve fund such amount, if any as shall be certified by the president of the corporation to the governor and director of the budget as necessary to restore such debt service reserve fund to an amount equal to the maximum amount provided therefor by the corporation as aforesaid. The president of the corporation shall annually, on or before December first, make and deliver to the governor and the director of the budget his certificate stating the amount, if any, required to restore each debt service reserve fund to the amount aforesaid and the amount or amounts so certified, if any, shall be apportioned and paid to the corporation during the then current state fiscal year.

4. In computing the amount of any debt service reserve fund for the purposes of this section, securities in which all or a portion of such fund shall be invested shall be valued at par, or if purchased at less than par, at their cost to the corporation.

ALTERNATIVE FUTURES: A RE-EVALUATION

INTRODUCTION

In May 1974 the New York State Legislature extended the life of the Temporary State Commission on the Water Supply Needs of Southeastern New York until March 31, 1975. The extension followed three years of study by the Commission of the technical, administrative, and environmental aspects of water supply in the Southeast New York region, including New York City and the eight surrounding counties of Suffolk, Nassau, Westchester, Orange, Rockland, Putnam, Dutchess and Ulster. These efforts culminated in a series of final reports and recommendations, summarized in the publication Water for Tomorrow, and a study bill (S.9611-A.11697) which was submitted to the State Legislature in March 1974. Among other things, this bill called for:

- establishment of a regional water supply corporation for Southeastern New York;
- downstream release schedules, to be set by the NYS Department of Environmental Conservation, for all water supply impoundments in the study area;
- universal metering in the Southeast New York region; and
- prohibition of the formation of private water works and sewage works corporations after June 1, 1975.

The Commission was extended in order to elicit the full views of interested parties in the region on this legislation. It has used these months to confer with local, regional, state and federal organizations and agencies who expressed an interest in the legislation and the future of water supply in the region. Out of these discussions have come several points of general agreement:

- There is a need, as recommended by the Commission, for a new source of water for the Southeast Region which can be developed incrementally with an ultimate yield of between 500 million and one billion gallons of water per day; and which can also be operated in an integrated fashion with ma-

for existing supplies. A taking from the Hudson River, with augmentation from an expanded Hinckley Reservoir in the Mohawk River Basin, is viewed the most suitable development project. There is some disagreement on the timing of the needed development.

- Every reasonable effort should be made to conserve the existing supplies and reduce consumption. There are some differences in degree of emphasis, methods to be used and timing, but most agree a metering program is a pre-condition for other regional water supply conservative efforts.
- New developments and existing facilities should be administered in an environmental, sensitive and responsive fashion.
- Excess release requirements now imposed on the City of New York by the Supreme Court decree on the Delaware River should be eliminated as soon as possible.
- The present regional arrangement as provided for in the Water Supply Act of 1905 and ancillary statutes is archaic and unsatisfactory, and a new regional configuration is needed to meet the water supply needs of the region in a timely and economical fashion.

However, there is no general agreement as to the form a new regional arrangement should take. The purpose of this supplemental report is to re-evaluate alternative institutional arrangements which have emerged from the studies of the Commission, other studies, and reactions from parties of interest. In addition, a review and re-evaluation of the status of other portions of the Commission's legislative program was indicated and is included.

except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the corporation secured by such debt service reserve fund as the same mature, the purchase of such bonds of the corporation, the payment of interest on such bonds of the corporation or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided however, that the corporation shall have power to provide that monies in any such fund shall not be withdrawn therefrom at any time in such amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds of the corporation then outstanding and secured by such debt service reserve fund, except for the purpose of paying principal of and interest on such bonds of the corporation secured by such debt service reserve fund maturing and becoming due and for the payment of which other monies of the corporation are not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may be transferred by the corporation to any other fund or account of the corporation and the corporation shall have power to provide that any such transfer shall not reduce the amount of such debt service reserve fund below the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on all bonds of the corporation and then outstanding and secured by such debt service reserve fund.

2. The corporation shall not issue bonds at any time if the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds outstanding and then to be issued and secured by a debt service reserve fund will exceed the amount of such debt service reserve fund at the time of issuance, unless the corporation, at the time of the issuance of bonds, shall deposit in such debt service reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount

Neither the resolution nor any mortgage, security instrument or other instrument by which a pledge, mortgage lien or other security is created need be recorded or filed and the corporation shall not be required to comply with any of the provisions of the uniform commercial code.

6. Neither the directors of the corporation nor any person executing the notes or bonds shall be liable personally on the notes or bonds or be subjected to any personal liability or accountability by reason of the issuance thereof.

7. The corporation, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the corporation, which shall thereupon be cancelled, at a price not exceeding (a) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or (b) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

8. Neither the state nor any municipality shall be liable on notes or bonds of the corporation and such notes and bonds shall not be a debt of the state or any municipality, and such notes and bonds shall contain on the face thereof a statement to such effect.

§ 1129. Reserve funds and appropriations. 1. The corporation may create and establish one or more reserve funds to be known as debt service reserve funds (a) any monies appropriated and made available by the state for the purposes of such funds, (b) any proceeds of sale of notes or bonds, to the extent provided in the resolution of the corporation authorizing the issuance thereof, and (c) any other monies which may be made available to the corporation for the purpose of such funds from any other source or sources. The monies held in or credited to any debt service reserve fund established under this section,

A PREFACE ON THE REGIONAL APPROACH

Local governments in New York State wishing to solve problems of regional scope have few regional governmental forms to which they can turn. In fact, regional government above the county level with the power of taxation is unconstitutional in New York. Many regional possibilities thus are precluded under state law; others are so cumbersome as to be impractical. For problems such as water supply, which is clearly regional in nature, this means that the few regional governmental options that do exist must be examined with care and molded to meet a region's needs.

The county itself a type of region--a first level region--and can act as an intra-county regional government. This approach, however, is poorly developed for water supply purposes in the southeast New York region. Counties could not in any case individually solve the region's water supply difficulties.

At the next higher level of region, the intercounty level, the options are severely constrained by state law. There is no provision for a single-or multi-purpose government with taxing authority. Such a regional form would require a state constitutional amendment.

The only available options for regional government at an intercounty level--the level at which southeast New York's water supply needs must be dealt with--are:

1. a special state agency created for a specific purpose, or an existing state agency given the mission by specific legislation;
2. an intercounty (city) cooperative agreement set up under contract;
3. a regional authority; or
4. some combination of these.

In case of intermunicipal contractual arrangements (option #2) this form becomes so cumbersome when more than two jurisdictions are involved that it is an impossible approach for long term needs. Each of the other options carries with it some surrender of local sovereignty and control in favor of the regional need. We may wish for simpler, more clear cut options, but they are not available. In most cases, the real options and choices would involve some combination of the possibilities listed. This is the case for water supply source development and management for the southeastern New York region.

There is substantial agreement on the need to develop an additional source of water supply for the southeast region, and to realign present institutions to improve management, environmental and conservation capability. However, because there are few potential regional arrangements available to do the job, there has been very limited regional effort in water supply.

Water supply source development and transmission functions are carried out by cities, villages and towns, supplemented by private utilities. Counties, as the first level region, have generally been confined to the sponsorship of studies. The only exceptions are the current attempts of Orange County to provide for future demands; two minor county transmission districts in Westchester County; and the Suffolk County Water Authority, which is fast becoming the major, if not the only, water utility in that county. The authority was the result of special legislation.

The second level region, the intercounty region, is involved in a quasi-regional system by virtue of the extra-territorial jurisdiction conferred on New York City by the Water Supply Act of 1905, so that it could develop reservoirs upstate, in exchange for the obligation to serve municipalities (cities, villages and towns, not counties) where facilities are located or through which transmission lines run. Considerable numbers in Westchester and Ulster counties are served under this arrangement, with potential demands from Putnam and Orange counties.

But this quasi-regional arrangement is a shot-gun wedding which has resulted in a rather hostile relationship. The people in these service areas and in the source areas are not considered constituencies by New York City, which governs the system. In turn, New York City is not considered responsive or accountable by the people in the service and source areas. One of the goals of this de facto regional water supply system is to limit service outside the City, not meet it. As such, it lacks a regional perspective, and has limited capability to develop additional sources, to extend service throughout the region, and to implement needed managerial, environmental and conservation objectives.

A new regional arrangement that could accomplish these objectives faces constraints beyond the state's legal limitations on regional organization and finance. First and foremost is the threat of change and fear of the unknown. This exists in the attitudes and minds of people and can only be overcome by

corporation may deem necessary, convenient or desirable concerning the use or disposition of its monies or property including the mortgaging of any such property and the entrusting, pledging or creation of any other security interest in any such monies or property and the doing of any act (including refraining from doing any act) which the corporation would have the right to do in the absence of such agreements. The corporation shall have power to enter into amendments of any such agreements within the powers granted to the corporation by this title and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the notes and bonds of the corporation.

5. It is the intention hereof that any pledge, mortgage or security instrument is made; that the monies or property so pledged, mortgaged and entrusted and thereafter received by the corporation shall immediately be subject to the lien of such pledge, mortgage or security instrument without any such pledge, mortgage or security instrument shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the corporation, irrespective of whether such parties have notice thereof.

(d) the setting aside of reserves or sinking funds and the regulation and disposition thereof from the ownership or operation or otherwise in connection with any project or projects and of the gross income from municipal bonds and notes and bonds and notes of any state agency owned by the corporation;

(e) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(f) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; the refunding of outstanding or other notes or bonds;

(g) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) limitations on the amount of monies to be expended by the corporation for operating, administrative or other expenses of the corporation;

(i) vesting in a trustee or trustees such property, rights, powers and duties in trust as the corporation may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this title, and limiting or abrogating the right of the bondholders to appoint a trustee under this article or limiting the rights, powers and duties of such trustee;

(j) any other matters, of like or different character, which in any way affect the security or protection of the notes and bonds.

4. In addition to the powers herein conferred upon the corporation to secure its notes and bonds, the corporation shall have power in connection with the issuance of notes and bonds to enter into such agreements as the

education and communication. However, on a more prosaic level, existing state law compels action in certain directions. From this perspective, the options available to deal with the region's water supply needs are:

No changes: This would require proceeding under the Water Supply Act of 1905 and other local government statutes. It would produce no solutions unless and until a major crisis occurs, touching off spontaneous corrective action.

State Agency: A state agency could be created and charged with the mission of regional water supply development and administration. Organizationally, it could take two routes:

1. Develop and operate a new source and wholesale water to water systems; or
2. In addition to new source development, take over New York City's source facilities and operate the existing and new facilities in an integrated fashion.

Fiscally, such a state agency could turn for capital and operating funds to the regular state budget, state bond funds if approved by statewide referendum, local bonds, user charges, or a combination of these. Details and practicalities of these options are developed more fully in the next section of this report.

New York City as Regional Supplier: New York City could become the regional water agency with some changes in the Water Supply Act. Organizationally, the statute would have to provide for:

1. The consolidation of the Board of Water Supply and the watershed operation section of the Bureau of Water Supply in the Department of Water Resources.
2. Representation of outside source and service areas on a development and operating policy board.
3. Responsibility to serve the region and authority to proceed as necessary.

Financing would present no problems as the city could proceed under present authority to contract debt and construct and operate needed works. For legislation to be enacted providing for this option, home rule requests from the city and participating counties would probably be necessary.

Regional Corporation: The authority device has been commonly used in New York State to overcome existing limitations in regional government. The regional corporation (authority) was the recommended choice of the Commission since it appeared to have more advantages than the other choices.

The major organizational characteristic of this approach is independent administrative and fiscal status. Authorities cannot be subject to external controls to any great extent and can raise revenues only through revenue producing facilities. This requires that for the authority approach to be viable, revenue producing facilities must be part of the authority from its beginning. Consequently, this approach requires the transfer of revenue producing facilities of New York City. This has the added plus of consolidated management and planning for all source and transmission facilities. If a revenue producing facility generating monies on a predictable and regular basis is not provided, the authority approach is not viable. Either it goes out of existence or runs deficits that must be made up by extra-ordinary means through state or local contributions.

THE CHOICE

The choice is a matter of acceptance by the parties of interest. The goal is to conserve and develop the water supply required to meet the forecasted needs of the southeast region, the major urban concentration in New York State with a population in excess of twelve million. All options have pluses and minuses. All could be made to work under proper management.

FEDERAL AID

The possibility of federal aid and participation has been advanced in the NEWS study. All options must provide for this possibility. If federal monies were advanced for capital construction of needed facilities either as a grant or long term deferred payment advance all options would be simplified. The fiscal constraints would be greatly moderated. Agreement between the parties of interest would be much more likely and implementation could proceed rapidly.

The following re-evaluation expands on these institutional alternatives. A draft bill implementing the regional corporation alternative is included in the Appendix to this report. Drafts of other bills implementing the alternatives of New York City as regional water supplier and a state agency as regional water supplier also are being prepared in order to give the Southeast New York Region the broadest choice possible in molding a new regional governmental form for water supply.

registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the corporation may be sold by the corporation, at public or private sale, at such price or prices as the corporation shall determine. No notes or bonds of the corporation may be sold by the corporation at private sale, however, unless such sale and the terms thereof have been approved in writing by (a) the comptroller, where such sale is not to the comptroller, or (b) the director of the budget, where such sale is to the comptroller.

3. *Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract with the holders thereof, as to:*

(a) pledging all or any part of the rentals, rates, charges and other fees made or received by the corporation and other moneys received or to be received from the ownership or operation or otherwise in connection with any project or projects and all or any part of the moneys received in payment of principal or interest on bonds or notes of any state agency and municipal bonds or notes acquired by the corporation, to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with bondholders or noteholders as may then exist;

(b) pledging all or any part of the assets of the corporation including municipal bonds and notes acquired by the corporation to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders as may then exist;

(c) the use and disposition of rentals, rates, charges and other fees made or received by the corporation;

purposes, including the acquisition and construction, operation and maintenance of facilities and projects authorized pursuant to the provisions of this title, and paying the cost thereof, the purchase of municipal bonds and notes, and bonds and notes of a state agency, the payment of the cost of any project, the payment of interest on bonds and notes of the corporation, the establishment of reserves to secure such bonds and notes, the provision of working capital and all other expenditures of the corporation incident to and necessary or convenient to carry out its purposes and powers;

(b) The corporation shall have power, from time to time, to issue renewal notes, to issue bonds to pay notes and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding, and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded;

(c) Except as may otherwise be expressly provided by the corporation, every issue of its notes or bonds shall be general obligations of the corporation payable out of any revenues or moneys of the corporation, subject only to any agreements with the holders of particular notes or bonds pledging any particular receipts or revenues;

2. The notes and bonds shall be authorized by resolution of the directors of the corporation, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding forty years from the date of issue, as such resolution or resale may provide. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or

ALTERNATIVES RE-EVALUATED

MUDDLING THROUGH

The option of muddling through is an option in political terms only. It would not encourage or direct the development of any new regional water supply source, or of any new regional arrangement to administer supplies in an equitable manner. Rather, it would let events control future action.

This option of leaving things as they are would maintain the status of the Water Supply Act of 1905 as the ruling law of water supply in Southeastern New York. The current administrative and political difficulties which have cropped up under the Act, as upstate counties in the region urbanized, would remain. For example:

(1) Although New York City's water supply sources are located in several upstate counties, and in fact have pre-empted some counties' internal supplies, these counties would continue to have little voice in regional water supply policy.

(2) The Water Supply Act requires New York City to sell water to municipalities in counties where its facilities are located and through which its transmission lines run. However, these sales are limited by the law to per capita levels which upstate counties have found restrictive.

(3) The City does not recognize counties as "municipalities" under the Water Supply Act and therefore refuses to sell water to county districts. Consequently, many systems would find it difficult to use the City system as a source of supply even though it is the only viable alternative. Nor will counties be able to play a coordinative role where such a role is desirable.

(4) Disputes between the City and upstate users would continue, with upstaters claiming that they are being refused a fair share of water and the City claiming it is being denied a fair price for the water sold.

Nor will muddling through under the existing law produce the water that will be needed by the region as a whole in coming years:

(1) Under the Water Supply Act of 1905, New York City is required only to sell water to municipalities where its facilities are located. No solution, therefore, would be provided for other Southeastern New York counties with impending water supply deficits. This would be particularly bad for

Nassau County, which will need additional water soon.

(2) New York City and upstate customers who depend on City lines also will be constrained by existing law. Under the Water Supply Act, the City cannot build facilities in Dutchess County (as recommended by the Commission) or in other counties in which it has not previously been given permission to build. Under existing institutional arrangements, in which the City dominates relationships with the source county, it is politically unlikely that the City will gain permission to develop new supplies in new counties.

(3) The most promising means of conserving the region's water supply--universal metering--will not be initiated. New York City, the principal municipality lacking universal metering, has not displayed the political capability to do so.

Clearly, the alternative of "muddling through" is one which will result only by default--through the inability to create change. Fortunately, most parties of interest, including New York City, have recognized and expressed support for some form of new regional water supply configuration.

NEW YORK CITY AS REGIONAL SUPPLIER

New York City, acting under the Water Supply Act of 1905, is in effect a regional water supplier. Its sources of supply are located outside its boundaries, and substantial numbers, including 70 percent of Westchester County, are served by its lines. However, the City became a regional supplier through a trade-off: the right to develop water in upstate counties, in exchange for the right of these counties to tap into its lines at cost. This trade-off was not the result of a recognized need for a regional perspective or for regionalized policy-making. Hostility, rate disputes and an apparent inability of the region as a whole to meet its projected water needs have been the consequences of the current arrangement.

Description

The option of New York City acting as a *genuine* regional supplier, carrying out the Commission's recommended projects, would require an overhaul of the Water Supply Act of 1905. To effect this option would require four fundamental changes:

- (1) *The consolidation of New York City's Board of Water Supply and the watershed operation section of the Bureau of Water Supply into a single functional unit.*

§ 1126. *Cooperation and assistance of other agencies. To avoid duplication of effort and in the interests of economy, the corporation may make use of existing studies, surveys, plans data and other materials in the possession of any state agency or any municipality or political subdivision of the state. Each such agency, municipality and subdivision is hereby authorized to make the same available to the corporation and otherwise to assist it in the performance of its functions. The officers and personnel of such agencies, municipalities and subdivisions, and of any other government or agency whatever, may serve at the request of the corporation upon such advisory committees as the corporation shall determine to create and such officers and personnel may serve upon such committees without forfeiture of office or employment and with no loss or diminution in the compensation, status, rights and privileges which they otherwise enjoy.*

§ 1127. *Transfer of officers and employees. Officers and employees of state departments and agencies may be transferred to the corporation and officers and employees of the corporation may be transferred to state departments and agencies without examination and without loss of any civil service status or rights. No such transfer may, however, be made except with the approval of the head of the state department or division involved, the director of the budget and the president of the corporation, and in compliance with the rules and regulations of the civil service commission of the state.*

§ 1128. *Notes and bonds of the corporation. 1. (a) The corporation shall have power and is hereby authorized from time to time to issue it negotiable bonds and notes in conformity with applicable provisions of the uniform commercial code in such principal amount, as, in the opinion of the corporation, shall be necessary to provide sufficient funds for achieving its*

respect to property so accepted by it, including agreements for the operation and maintenance of such property as part of a facility or facilities.

5. The corporation may, whenever it determines that it is in the interest of the corporation, and subject to any existing agreement, dispose of any real property which it determines is not necessary, convenient or desirable for its purposes.

6. The corporation may, whenever it shall determine that it is in the interest of the corporation, rent, lease, or grant easements or the rights in any land or property of the corporation.

§ 1125. Construction contracts. 1. Construction contracts let by the corporation shall be in conformity with the applicable provisions of section one hundred thirty-five of the state finance law, but the corporation in its discretion may assign such contracts for supervision and coordination to the successful bidder for any subdivision of work for which the corporation receives bids.

2. The corporation shall not award any construction contract except to the lowest bidder who in its opinion is qualified to perform the work required and is responsible and reliable. The corporation may, however, reject any or all bids or waive any informality in a bid if it believes that the public interest will be promoted thereby. The corporation may reject any bid if in its judgment the business and technical organization, plant, resources, financial standing or experience of the bidder, compared with the work to be performed, justifies such rejection.

3. Any construction contract awarded by the corporation shall contain such other terms and conditions and such provisions for penalties, as the corporation may deem desirable.

(2) A formula to provide representation from the rest of the Southeast New York region, plus outside source areas, on the new governing body created by the merger of the Board and Bureau of Water Supply.

(3) Legislative recognition of counties as entities to which water could be sold. This would permit the city to wholesale water to the counties, which would in turn retail to existing local systems. All counties in the region would be eligible to purchase water from the City system.

(4) Authorization for New York City to construct water supply projects as recommended by the Commission. These would include a taking from the Hudson River at Hyde Park and expansion of Hinckley Reservoir in the Mohawk River Basin.

The Board of Water Supply was created by the state in the Water Supply Act of 1905 and has since been incorporated into the City's administrative code. Its directors are appointed by the mayor of New York City for life tenures. The Board is responsible for the development and construction of water supply facilities. Over the years, it has carried out this responsibility as an agent of the City. Upstate source and service counties are not involved in policy decisions, nor are they represented on the Board of Water Supply. Lack of involvement in the City's water supply planning efforts has become of particular concern to Putnam, Ulster and Westchester counties.

The Bureau of Water Supply is a City agency within the City Department of Water Resources, which in turn is within the City's Environmental Protection Administration. It is responsible for the maintenance and operation of the City's water supply facilities. As such, it is involved in the many day-to-day activities necessary to operate a vast water supply system. But it is also responsible for policy decisions affecting upstate source and service counties, including recreation on the reservoirs, stream releases and rates.

If these two agencies were merged under this alternative, a governing structure representative of the region as a whole could be established to make regional water supply policy. Alternative formulae for this governing board range from the relatively simple to the complex. In any case, the scheme should meet two criteria:

--New York City must have majority representation.

--At the same time, this majority should not be able to dominate policy-making. There should be a mechanism to encourage a consensus-forming process.

One possible formula would call for a governing board of perhaps fifteen members. Eight would represent New York City, two Long Island, one the county

of Westchester, one the counties of Putnam, Dutchess and Ulster, one the counties of Rockland and Orange, and two would represent source areas outside the service area. The board would be appointed by the mayor of New York. A quorum of twelve would be established, and policy would be made by three-quarters votes.

The ultimate formula would undoubtedly be settled upon by the region's interested parties, if they decide that this option of New York City as regional supplier is desirable. The final structure should be circumscribed such that it wouldn't interfere with the City's day-to-day operations. However, its policy-making powers would extend to operating decisions of regional significance as well as regional planning, financing and construction decisions.

Financing

New facilities would be financed with New York City bonds, and user rates to retire the bonds and to maintain and operate the system would be established by the new governing board.

Evaluation

This option is attractive for several reasons. First, existing regional facilities would remain in City hands, making it more politically palatable to City interests and removing such questions as compensation for it upstate facilities. Second, existing and new regional supplies could be operated in an integrated manner. Third, taxes on upstate City property would not be jeopardized, satisfying a fear frequently expressed in recent months by source area representatives. And fourth, local water supply activities would continue as they are, except that once localities found a need to draw on the regional system, counties would have an opportunity to play a coordinative role. In general, because this option builds on existing institutions, it might be the easiest to implement.

The primary disadvantage is that the City will remain suspect as a regional water supplier. Disenchantment with a City system vested with expanded regional authority has been expressed by a number of parties of interest in the region. This may prove a political liability difficult to overcome.

In addition, a City-focused option might resist conservation measures such as universal metering even if mandated by law.

Finally, implementation of this option would require a home rule request by the City of New York. This option therefore would not be viable unless the

that any such condemnation proceedings shall be brought only in the supreme court and the compensation to be paid shall be ascertained and determined by the court without a jury.

2. Where a person entitled to an award in the proceedings to condemn any real property for any of the purposes of this title remains in possession of such property after the time of the vesting of title in the condemnor, the reasonable value of his use and occupancy of such property subsequent to such time as fixed by agreement or by the court in such proceedings or by any court of competent jurisdiction shall be a lien against such award subject only to the liens of record at the time of vesting of title in the condemnor.

3. Title to all property acquired under this act shall vest in the corporation.

4. Notwithstanding the provisions of any general, special or local law or charter, any municipality, by resolution of its governing body, is hereby empowered without referendum and without the consent of any board, officer or other agency of the state, to sell, lease, lend, grant or convey to the corporation, or to permit the corporation to use, maintain or operate as part of a facility or facilities any real or personal property owned by it, including all or any part of any such facilities, which may be necessary or useful and convenient for the purposes of the corporation and which may be accepted by the corporation. Any such sale, lease, loan, grant, conveyance or permit may be made with or without consideration and for a specified or an unlimited period of time and under any agreement and on any terms and conditions which may be approved by such municipality and which may be agreed to by the corporation in conformity with its contracts with the holders of its bonds and notes, the corporation may enter into and perform any and all agreements with

and purposes.

(b) *The existing facilities of the Delaware and Catskill systems of the city of New York excluding the Kensico Reservoir and the transmission facilities therefrom to the corporate limits of the City of New York shall also be assigned, transferred and dedicated as required by the foregoing provisions of this section.*

3. *Any public officer or employee under civil service, presently employed in the operation or maintenance of the water supply facilities of the Department of Water Resources of the city of New York located outside of the said city, may be transferred to the corporation with the consent of the city of New York; provided, however, that such officer or employee shall be eligible for transfer to and employment by the corporation without examination; and provided further that the salary or compensation, including all existing benefits and entitlements of any such officer or employee shall be paid by the corporation after such transfer and employment by the corporation.*

4. *The outstanding bonded indebtedness for the water supply facilities of the city of New York located outside the city of New York herein provided for, shall remain the responsibility of the city of New York; provided, however, that the corporation shall make payment to the city of New York each year of an amount equal to the principal and interest paid by the city of New York for the said bonded indebtedness.*

§ 1124. *Acquisition and disposition of real property. 1. The corporation may acquire, by purchase, gift, grant, transfer, contract or lease, or by condemnation pursuant to the condemnation law, any real property it may deem necessary, convenient or desirable to effectuate the purposes of this title, provided however, that any such purchase or condemnation is in conformity with section 1122 subdivision (a) and (b) of this title, and further provided*

City itself decides to move on it. Although this option should be more palatable to the City than the Commission's recommendation that its facilities be transferred to a new regional authority, it may still resent encroachment on its territory and delay action.

STATE AS THE REGIONAL AGENCY

Description

This option would provide for the state as a regional supplier either of new regional sources of water only, or of both new and existing (New York City's) regional sources.

In either case, legislation would be required to give a state agency the responsibility and authority to develop and operate new water supply sources along the lines suggested by the Commission. If the state were to take over the existing regional facilities, additional legislation would be required. If it did not acquire these facilities, the New York City water supply system would continue its operations essentially unchanged.

This role of water developer and supplier would be new for the state and could be given to either a new or existing state agency. The agency would determine the allocation of water, the wholesale price of water, and conditions of service. It would wholesale the water to New York City and counties in the service and source areas as they came to need it.

Financing

If the state were concerned with the new facilities only, capital funds would have to come from one or a combination of several sources:

- (1) the regular state budget.
- (2) a bond issue approved in statewide referendum.
- (3) local bonds, upon allocation of costs among participating counties and the City, who would be contributing to a joint effort under state sponsorship.
- (4) local bonds with a lease back arrangement to the state and provision for contributions from the participants.

Operating funds could be raised from:

- (1) appropriation in the regular state budget
- (2) appropriation in local budgets for readiness to serve
- (3) charges for actual water used

The first two sources would decrease as user charges expanded.

If the state were to assume control of existing regional facilities as well as develop and operate new ones, the financing choices are similar, except that much of the revenues could be generated through water rates using the existing facilities as the financial base.

Evaluation

Turning to the state is an attractive option to those who are suspicious of both New York City as a genuine regional supplier and the authority concept advanced by the Commission in its initial legislation (S.9611-A.11697). Some have also argued that if the state would take responsibility for developing new sources only, this option would enable the speedy development of new water supply sources while avoiding the political delays involved in altering existing institutional arrangements.

However, early in its studies the Commission was discouraged from the possibility that the State would be willing to spend the money necessary to get into the water supply business in Southeastern New York. In discussions of recent months, the Commission has perceived no change in that position. It is also questionable whether voters in a statewide referendum would approve a large bond issue for the benefit of Southeastern New York. A scheme in which capital costs are allocated among the region's counties would require the approval and cooperation of each participating governing body, but may be the most viable financing strategy should the state become the regional supplier. A lease back arrangement following issuance of local bonds is similar to the method used to finance the new State Mall in Albany and may not be politically feasible.

Even if the state were willing to enter the region's water supply picture as a developer and supplier, several disadvantages pointed out in previous Commission volumes would persist. Most significantly, if the state were concerned with new sources only, the City's existing and the State's new systems would operate independently. This would seriously violate the Commission's recommendation that new projects be integrated with the existing regional system. In addition, there would be division in the administration of the two systems, leading to inefficiencies and possible rate inequities.

A NEW REGIONAL CORPORATION

This is the alternative incorporated into the study bill S.9611-A.11697, as recommended by the Commission.

§ 1123. *Transfer to corporation of certain water supply facilities of the city of New York.* 1. *The corporation shall have authority to require and provide for the acquisition, conveyance and transfer to it of all water supply facilities of the city of New York, existing and located outside of the boundaries of the city of New York, and the city shall effectuate such transfer of such facilities to the authority; provided, however, the authority assumes all debts, obligations, charges, liens, encumbrances and responsibilities of the city of New York existing at the time of such acquisition, conveyance and transfers, and all such debts, obligations, charges, liens, encumbrances and responsibilities shall become and be deemed the obligations of the corporation; and, provided further, that the employees, servants and agents of the city of New York shall not lose any of their rights and benefits to which they are and were entitled at the time of the acquisition, conveyances and transfers, nor shall any of them be subject from dismissal or discharge because of such acquisitions, conveyances and transfers, but that they shall become and be deemed thereafter to be servants, employees and agents of the corporation with full civil service rights and benefits to which they may have been entitled on the day of such acquisition, conveyance or transfer.*

2. (a) *The existing water supply facilities of the city of New York in the counties of Putnam, Ulster, Greene, Sullivan, Delaware, Schoharie, Orange and Westchester together with all contracts, books, maps, plans, papers and records of whatever description pertaining to subjects or matters relating to the design, construction, operation and affairs of the existing water supply system shall be assigned, transferred and dedicated to the use of, and be in the possession of, and under the jurisdiction, control and supervision of the corporation, and the corporation is empowered to take possession thereof for its uses*

benefited or which receives the service.

(b) the corporation shall notify the public service commission of the rates to be fixed on the charges to be established, and the basis for the determination thereof. The public service commission may respond to such notification by issuing an advisory opinion directed to the corporation. Such advisory opinion, if delivered to the corporation within a reasonable time period from the date of notification, such time period not to exceed ninety days, shall be considered by the corporation with due deliberation, prior to the fixing of rates or establishment of charges.

(c) in addition to the foregoing procedures, the corporation shall not fix any rates or establish any charges to be collected by the corporation without first conducting public hearings upon due notice, which hearings are to be held at locations with the service area to be affected by such rates or charges.

(d) the corporation, in carrying out its purposes, and in exercising its powers and authority, shall give due consideration to the standards for water quality and purity set forth in articles fifteen and seventeen of the environmental conservation law, and in the appropriate sections of the public health law, and the corporation may adopt such standards or portions thereof, as the standards of the corporation.

Description

The study bill has been modified significantly with regard to the proposed regional corporation, which in essence is a public authority. However, the thrust is the same. Under this option, New York City's upstate facilities would be transferred to and operated by the new regional corporation. The new corporation would also be authorized to plan, finance, construct, operate and maintain new water supply projects, as recommended by the Commission, including transmission capability to Nassau County. These new facilities and the existing system would be operated in an integrated manner.

The Southeastern New York Water Facilities Corporation, the name of the proposed authority, would wholesale water to any county in the region, as well as source counties requesting such sales. The allocation of water, the wholesale price and rates, and the conditions of service would be determined by the corporation. The law establishing the corporation would supersede the Water Supply Act of 1905 and the corporation would not be bound by any of its restrictions.

Distribution of water would remain a local function, although counties would be afforded an opportunity to play a coordinative role. County districts could construct transmission facilities to carry water from regional sources to local distributors, or they could merely act as brokers of regional water.

Existing local systems would not be altered by the regional corporation's activities; nor would the ability and responsibility of these systems to develop local sources be affected. However, once these systems saw a need to turn to new regional sources for water, they would have to purchase it from the corporation through the county.

Changes

The initial study bill has been changed in several major respects in response to comments and suggestions from the region's parties of interest. The re-drafted bill is printed in its entirety in the Appendix to this report.

Governing Board: The original bill called for the appointment of nine directors, to be representative of the region's service and source areas, by the governor. The re-drafted bill is more specific and attempts to assure a fair division of decision-making power among New York City, the rest of the region's service area, and outside source areas. It is based upon two criteria:

--New York City, with the greatest population and demand for water, should have a majority representation.

--At the same time, this majority should not be able to dominate policy-making. There should be a mechanism to encourage a consensus-forming process.

The new bill proposes a governing board of fifteen members, divided in the following manner:

- 8 representing New York City, to be appointed by the mayor of the City;
- 2 representing Long Island--one from Nassau and one from Suffolk--to be appointed by the Governor from lists of persons nominated by the county executives of the respective counties;
- 1 representing the county of Westchester, to be appointed by the Governor from a list of persons nominated by the county executive;
- 1 representing the counties of Putnam, Dutchess and Ulster, to be appointed by the Governor from a list of persons nominated by the county executives or county legislative bodies, as the case may be;
- 1 representing the counties of Rockland and Orange, to be appointed by the Governor from a list of persons nominated by the county executive or county legislative body, as the case may be;
- 1 representing the current source areas of Delaware, Sullivan and Schoharie counties, to be appointed by the Governor from a list of persons nominated by the county executives or county legislative bodies, as the case may be;
- 1 representing the new source areas (assuming the Commission's project recommendations are carried out) of Herkimer and Oneida counties, to be appointed by the Governor from a list of persons nominated by the county executive or county legislative body, as the case may be.

To assure a meaningful voice for the representatives outside of New York City, a quorum of twelve is established, and three-quarters votes are required.

Corporation Powers: The original bill granted broad powers to the proposed corporation in the tradition of public authorities. The re-draft constrains these powers in several areas.

The corporation's condemnation and purchase powers are restricted such that it is prohibited from taking over existing water supply or distribution systems in the region. In addition, when a water source is pre-empted in the process of developing a regional system, the corporation must provide those water supply systems drawing on the source with water at cost.

The original bill exempted the proposed corporation from the regulation of the State Public Service Commission in order to protect the corporation's

2. When requested by the governing body of a municipality, or when requested by a person or state agency, the corporation may advise such municipality, person or state agency on matters relating to the planning, construction, operation and maintenance of any projects which the corporation is authorized to construct pursuant to any provisions of this title, and pursuant to a contract with a municipality, person or state agency, may render technical assistance and may undertake research, planning and testing with respect to any such matter, and the corporation may make a reasonable charge to such municipality, person or state agency for the performance of any such functions authorized by this subdivision.

3. Neither the public service commission nor any other regulatory agency of the state, shall have jurisdiction over the authority, except as provided herein, in the management and control of its properties or operations or any power over the regulation of rates fixed or charges collected by the authority, provided that:

(a) the corporation, in fixing rates or establishing charges to be collected by the corporation, shall develop a method or formula for equitably providing for and allocating revenues and for equitably allocating and financing the capital and operating costs, including payments to reserve funds authorized by law and payments of principal and interest on obligations. Such method or formula shall be established by the corporation on a ratio of full valuations of real property of the counties within the district, including the city of New York, or on the basis of the amount of services rendered or to be rendered, or benefits received or conferred or to be received or conferred, or on any other equitable basis, including the levying of apportionment of such costs over the entire area of the district, or on a part thereof, which is

(s) to promulgate, establish and adopt such rules and regulations as may be necessary and proper to carry out the purposes of the corporation.

ability to issue tax-exempt bonds. To provide a check on the rate-setting authority of the corporation, the re-drafted bill calls on the PSC to play an advisory role in rate-setting. In general, the re-drafted bill incorporates the language of Local Finance Law, directing the corporation to set rates in a fair and equitable manner.

The re-drafted bill also specifically provides that the corporation will take into account the water quality standards of the Departments of Health and Environmental Conservation in establishing its own standards.

Water Supply Projects: The original bill merely encouraged the proposed corporation to develop the water supply projects recommended by the Commission. The re-draft limits the corporation to these projects as they are needed: flood-skimming the Hudson River at Hyde Park with transmission capability to Nassau County, and expansion of Hinckley Reservoir in the Mohawk River Basin. If additional development is necessary, further legislative action would be required. However, this does not preclude the possibility of an interface between regional upstate sources and the groundwater source on Long Island.

Property Taxes: Since the proposed corporation is a public benefit corporation, it is not subject to taxation. However, the original bill provided for payments in lieu of taxes to communities in which New York City's upstate reservoir facilities (to be transferred to the new corporation) are located. It also provided that these payments would not be less than the tax revenues in the year prior to takeover.

This "save loss" clause was designed to protect the fiscal base of upstate source communities. But the "in lieu of" payments would be based on assessments performed by the State Board of Equalization and Assessment. These would likely be less in the future than would be assessments of local officials, who assess City facilities at substantially higher levels than other property in their communities. Thus, the "in lieu of" payments would remain stagnant until the assessment rates on the rest of the communities' property caught up to the existing rate of assessment on the water supply property. For many communities, which depend heavily on tax revenues from the water supply property, this would mean either no growth in their fiscal bases or a disproportionate shift of the property tax burden onto individual citizens.

To remedy this situation, the new bill establishes the existing levels of assessment of upstate water supply facilities as the level of fair value, and

permits these values to increase in proportion to growth of value of other properties located in a given community as of the effective date of the legislation.

Comprehensive Planning: The original bill gave the proposed corporation responsibility to prepare a comprehensive urban water resources facilities plan for the region, including waste water and drainage services. Many parties of interest criticized this provision as potentially conflicting with or duplicating the functions of other state and local agencies. This provision is dropped from the re-drafted bill.

Definition of the Region: In addition to New York City and the eight surrounding counties, Delaware and Sullivan counties are included in the definition of the Southeast New York Region.

Financing

The corporation would be self-supporting soon after its inception, through revenues from the sale of water via the existing regional reservoir and aqueduct facilities. It would sell bonds to raise capital for new construction.

Ideally, the costs of the regional system would be allocated according to use and paid for through user fees, but at least initially there would have to be assessments for new capital costs and other readiness to serve charges directly against the counties and New York City. Whether user charges would be equal throughout the region or differential based on geographical location and other considerations would be for the corporation's governing board, with the advice of the Public Service Commission, to decide. The ultimate overall rates, of course, would be largely determined by the terms of the bond issues to finance the new regional projects. These terms can not be predicted.

Tables 2A and 2B, based on figures from previous Commission studies, which already are somewhat dated, offer a very rough estimate of the allocation of the costs of the proposed new facilities among the region's counties and New York City. Commission figures place the annual capital costs and other readiness to serve charges for Phase I (Hudson flood skimming to West Branch) and Phase II (Hinckley expansion with aqueduct to Kensico) projects at \$36.4 million and \$22.4 million, respectively. Annual operating and maintenance costs are estimated at \$8.5 million and \$4.8 million, respectively. These figures are pegged to an ENR index of 2000. (Table 2A)

city of New York; the county of Nassau and/or the corporation shall pay the capital costs of an aqueduct connecting the fourth stage of the third city tunnel to the county of Nassau.

(n) to pay the city of New York that portion of the operating costs of the fourth stage of the third city tunnel incurred by transmitting the water supplied to the county of Nassau from Kensico Reservoir to the point in the county of Nassau from Kensico Reservoir to the point in the county of Queens where the county of Nassau will take delivery of the water.

(o) to own and operate hydrologic data collection facilities necessary to the operation of the corporation.

(p) to contract and cooperate with the Northeastern United States Water Supply Study group, its successor, or the United States Army Corps of Engineers, and any other agency of the federal government, and appropriate agency of this state and/or any other state for the purpose of data collection, planning, financing, construction, and operation of water facilities and water management facilities.

(q) to declare, by adoption of a resolution by the directors of the corporation, a water supply emergency if at any time it is found, after due investigation and deliberation, that there exists within the district a need for the rationing of water. In the event of such a determination, a rationing plan shall be developed, adopted and put into effect to provide for rationing of the available water supply in an equitable manner to the district, or part thereof.

(r) to determine in cooperation with the counties and the city of New York of the district the amount of water to be supplied to each of the said areas of the district.

the meaning of the general municipal law.

(h) to enter into a contract or agreement with any state agency for the planning, construction, operation and maintenance of facilities, for and on behalf of such state agency; provided, however, that such contract or contracts shall be upon such terms and conditions as the corporation and such state agency shall determine to be reasonable, including but not limited to the reimbursement of all costs of planning, financing, construction and operation and maintenance, and any claims arising therefrom; and, provided further, that no such contract shall be deemed to be a contract for public work or purchase within the meaning of the state finance law.

(i) to acquire in the name of the corporation any facilities or land necessary to fulfill the purposes of the corporation.

(j) to design and construct new facilities anywhere in the state to be operated in conjunction with existing facilities.

(k) to enter into any contract with any state agency to construct and/or regulate reservoirs to insure adequate water flows in the Hudson River at Hyde Park for water supply takings.

(l) to continuously update forecasts of water supply, and water needs in the district, and based on such information, to develop and revise a long range plan to carry out the purposes of this title.

(m) to contract with the city of New York to include the water supply needs of the county of Nassau in the design of the fourth stage of the third New York city tunnel, for which the corporation shall pay to the city of New York the difference in capital costs by the enlarged tunnel which includes the capability for the county of Nassau and the tunnel capacity needed only for the

Annual costs to New York City and the region's counties were allocated by estimating each unit's projected demand on the proposed facilities as a proportion of total projected demand on these facilities in the years 2000 and 2020. These years were chosen because they are the approximate years upon which capacity of the system is based. That is, Phase I will provide sufficient capacity to about 2000, and Phase II to about 2020. Thus, for example, New York City will demand about 78 per cent of the capacity of the Phase I project, and about 72 per cent of Phase I and Phase II projects combined. (Table 1)

These proportions were applied for the City and each county to the estimated annual capital and operating costs of Phase I and Phase II projects. (Table 2B) This is just one method of allocating costs.

It should be noted that the operating costs are based on capacity use of the new facilities. These costs, to be paid through user charges, will in reality be based on actual use, which probably will be less than capacity, and can not be predicted for any one year.

Evaluation

The advantages of a Southeastern New York Water Facilities Corporation are substantial. The Commission views it as a balanced compromise, creating an agency large enough to have a truly regional view, but not so far removed as to weaken local control. Designed around the needs and characteristics of Southeastern New York, it would be capable of flexible response to changing needs. By transferring the existing regional system to the authority, new projects would be integrated with it to maximize efficiency. With representation from outside service and source counties, as well as New York City, a forum for cooperation and policymaking would be created. The corporation would have a large and equitable financial base. It would have the political capability to institute universal metering in New York City and other conservation measures in the region.

Despite these advantages, opposition to the regional corporation emerged from both downstate and upstate quarters after the introduction of S.9611-A.11697.

Opposition from New York City was not unexpected, since it would be losing sole control over a water supply system it has developed over a period of nearly 150 years. At the same time, the Commission believes the proposed corporation would substantially benefit the City as well as outside counties,

TABLE 1
ALLOCATION OF DEMAND
ON NEW FACILITIES¹
(%)

	% OF DEMAND	
	2000	2020
Dutchess ²	1.5%	3.2%
Nassau ³	6.9%	8.7%
New York ⁴	78.3%	72.2%
Orange ⁵	0.0%	1.2%
Putnam ²	0.8%	1.1%
Rockland ⁶	0.0%	0.0%
Suffolk ⁶	0.0%	0.0%
Ulster ²	0.4%	0.8%
Westchester ⁷	12.2%	12.6%
Total	100.1%	99.8%

SOURCE: Scope of Public Water Supply Needs

¹ The years 2000 and 2020 are used in allocating projected demand because these are the approximate years upon which capacity of the system is based. That is, Phase I will provide sufficient capacity to about 2000, and Phase II to about 2020.

² Based on counties' projected deficits over local supplies

³ Assumes total dependence to meet projected deficits on regional system, which currently is more economical than recharge

⁴ Assumes 240 MGD savings from universal metering

⁵ Assumes additional 40 MGD in local project yields through 2000

⁶ Payment of readiness to serve costs optional for those counties with no projected demand on regional system through 2020; however, if and when they draw on new works, they would have to pay for capital costs in proportion to the increment in the capacity of system as a whole necessary to serve them.

⁷ Assumes total dependence on regional system

of which, together with the acquisition of such properties are hereby declared to be public purposes.

(e) to sell water from the corporation's water supplies to the city of New York and to the counties within the district, on a wholesale basis. The corporation shall also have the power to sell water on a wholesale basis to any county without the district, which county is a source area, or through which man-made water transmission facilities pass. The corporation shall have the affirmative duty to preserve the right of any water supplier, public or private, to continued access to, and withdrawal from, any water source, title to which source becomes vested in the corporation; and the rate charged for such water as may be so supplied shall be determined by, and be equal to, the cost of the said water to the corporation.

(f) to fix, alter, charge and collect rates and other charges to the counties in the district and the city of New York, at reasonable rates to be determined by the corporation for the purpose of providing for the payment of the expenses of the corporation, the construction, improvement, repair, maintenance and operation of the water supply system of the corporation, the payment of the principal of and interest on the obligations of the corporation, and to fulfill the terms and provisions of any agreement made with the purchasers or holders of any such obligations.

(g) to enter into any contract or agreement with any municipality for the operation and maintenance of a water facility or related facility upon such terms and conditions as the corporation shall determine to be reasonable, including but not limited to the reimbursement of all costs of such operation and maintenance and claims arising therefrom; provided, however, that no such contract shall be deemed to be a contract for public work or purchase within

mains and pipelines, pumping stations and equipment, or any other property incidental to and included in such system or part thereof, and any improvements, extensions and betterments for the purpose of developing additional water supply for the district, provided, however, that such development shall be limited to the development of one or more of the following new sources:

- (1) a taking of water from the Hudson River;
- (2) expansion of the Hinkley Reservoir;
- (3) provision for interchange of surface water from upstate sources of the corporation with groundwater sources located in the portion of the district situate on Long Island.

(c) the foregoing powers of purchase and condemnation, respectively, may be exercised by the corporation to acquire a local water supply source whether publicly or privately owned, provided, however, that in no event shall such acquisition be made without the written consent of the municipality or private company owning such source and further provided that any such purchase power or condemnation power shall not include the power to acquire the water supply source or part thereof, as described above, of any supplier within the service area of such water supplier.

(d) to construct, develop and operate any water supply system, except a local distribution system or part thereof, including plants, works, instrumentalities, or parts thereof, and appurtenances thereto, dams, reservoirs, water mains, pipelines, pumping stations and equipment, or any other property incidental to or included in such system or part thereof within the district, and to acquire, by condemnation in the manner provided by this title, or by purchase, lands, easements, rights in land and water rights and rights-of-way in connection therewith within the district, and to own and operate, maintain, repair, improve, reconstruct, enlarge and extend, subject to the provisions of this title, any of its properties acquired or constructed under this title, all

TABLE 2A
ANNUAL COSTS
FOR NEW FACILITIES¹
(in millions of dollars)

	PHASE I HUDSON FLOOD SKIMMING TO WEST BRANCH				PHASE II HINCKLEY EXPANSION & AQUEDUCT TO KENSICO			
	1975 ²		1985 ³		2005 ⁴		2020 ⁵	
	<u>Incremental</u>	<u>Total</u>	<u>Incremental</u>	<u>Total</u>	<u>Incremental</u>	<u>Total</u>	<u>Incremental</u>	<u>Total</u>
CAPITAL ⁶	36.4	36.4	--	36.4	22.4	58.8	--	22.4
OPERATION & ⁷ MAINTENANCE	--	--	8.5	8.5	--	8.5	4.8	13.3
TOTALS	36.4	36.4	8.5	44.9	22.4	67.3	4.8	35.7

SOURCE: Proposed Water Supply Projects in Southeastern New York

¹ Based on 40-year amortization period for new works
² Or year one of repayment of Phase I bond issue
³ Or year one of operation of Phase I facilities
⁴ Or year one of repayment of Phase II bond issue
⁵ Assumes repayment of Phase I bond issue complete
⁶ Includes readiness to serve costs, i.e., in addition to capital costs, includes costs of planning, administration and taxes
⁷ Based on capacity use

TABLE 2B									
ALLOCATION OF ANNUAL COSTS									
FOR NEW FACILITIES									
(in millions of dollars)									
PHASE I HUDSON FLOOD SKIMMING TO WEST BRANCH					PHASE II HINCKLEY EXPANSION & AQUEDUCT TO KENSICO				OTHER COSTS
	1975		1985		2005		2020		
	<u>Incremental</u>	<u>Total</u>	<u>Incremental</u>	<u>Total</u>	<u>Incremental</u>	<u>Total</u>	<u>Incremental</u>	<u>Total</u>	
Dutchess		-							
Capital	.55	.55	-	.55	.72	1.27	-	.72	
Operating	-	-	.13	.13	-	.13	.15	.28	
Nassau									Transmission capability
Capital	2.51	2.51	-	2.51	1.95	4.46	-	1.95	through New York City:
Operating	-	-	.59	.59	-	.59	.42	1.01	Negotiable Cost
New York									
Capital	28.50	28.50	-	28.50	16.17	44.67	-	16.17	Universal Metering:
Operating	-	-	6.66	6.66	-	6.66	3.47	10.13	\$8.9 million/year
Orange									
Capital	-	-	-	-	.27	.27	-	.27	
Operating	-	-	-	-	-	-	.06	.06	
Putnam									
Capital	.29	.29	-	.29	.25	.54	-	.25	
Operating	-	-	.07	.07	-	.07	.05	.12	
Rockland									
Capital	-	-	-	-	-	-	-	-	
Operating	-	-	-	-	-	-	-	-	
Suffolk									
Capital	-	-	-	-	-	-	-	-	
Operating	-	-	-	-	-	-	-	-	
Ulster									
Capital	.15	.15	-	.15	.18	.33	-	.18	
Operating	-	-	.03	.03	-	.03	.04	.07	
Westchester									
Capital	4.44	4.44	-	4.44	2.82	7.26	-	2.82	
Operating	-	-	1.04	1.04	-	1.04	.61	1.65	
TOTALS	36.44	36.44	8.52	44.96	22.36	67.32	4.80	35.68	

purposes and for the exercise of the powers granted in this title; and,

q. to appoint officers, agents and employees.

§ 1122. Special powers of the corporation. 1. In addition to the general powers provided for in this article, the corporation shall have the following special powers:

(a) to purchase, in the name of the corporation, any water supply system, including plants, works, instrumentalities or parts thereof and appurtenances thereto, lands, easements, rights in land and water rights, rights-of-way, contract rights, franchises, approaches, connections, dams, reservoirs, water mains and pipelines, pumping stations, and equipment, or any other property incidental to and included in such system or part thereof, and any improvements, extensions and betterments, for the purpose of developing additional water supply for the district, provided, however, that such development shall be limited to the development of one or more of the following new sources:

(1) a taking of water from the Hudson River;

(2) expansion of the Hinckley Reservoir;

(3) provision for interchange of surface water from upstate sources of the corporation with groundwater sources located in the portion of the district situate on Long Island.

Development of such projects shall include the development of any withdrawal, treatment and transmission facilities necessarily related thereto.

(b) to condemn in the name of the corporation, any water supply system, including plants, works, instrumentalities, or parts thereof and appurtenances thereto, lands, easements, rights in land and water rights, rights-of-way, contract rights, franchises, approaches, connections, dams, reservoirs, water

and certain state agencies, and to enter into option arrangements with municipalities for the purchase of municipal bonds and notes;

m. to sell any municipal bonds or notes, other securities, or other personal property acquired by the corporation whenever it is determined by the corporation that the sale of such property is desirable; municipal bonds and notes acquired by the corporation shall be sold by the corporation only at public sale at such price or prices as it shall determine, and a notice of such sale shall be published at least once at least five days prior to the date of such sale in a financial newspaper or journal published in the city of New York; the proceeds of the sale by the corporation of any municipal bonds or notes shall be required to be held for the benefit of the bonds and notes and interest thereon entitled to be paid therefrom, or shall be used to purchase, or applied towards the redemption of bonds or notes; at not more than the redemption price than applicable, plus accrued interest to the next payment date thereon, or, if not then redeemable, at a premium of not more than the redemption price applicable on the first date after such purchase upon which the bonds or notes become subject to redemption, plus accrued interest to said date, all subject to such agreements with bondholders or noteholders as may then exist;

n. to accept any gifts or grants or loans of funds or property from the federal government or from the state or from any other federal or state public body or political subdivision or any other person and to comply, subject to the provisions of this title, with the terms and conditions thereof;

o. to appoint such advisory committees as may be necessary, convenient or desirable to the effectuation of the purposes and powers of the corporation;

p. to do all things necessary, convenient or desirable to carry out its

in the form of increased water supply, a larger financial base to deal with water quality problems, and relief of existing debt (some \$600 million) on the City system. But the City's opposition can not be ignored and may delay implementation of this option.

Upstate, opposition developed in many source communities of Delaware, Sullivan, Putnam, and Ulster counties. They feared a loss of future tax revenues from the City's upstate water supply facilities after they were turned over to the corporation, and a disproportionate shift of the tax burden to local citizens. Objections were also voiced throughout the region by local officials, environmentalists and private water suppliers to the broad and largely unchecked powers of the corporation's public authority structure.

The modifications of the original study bill--constraints on the corporation's powers, adjustments of the property tax structure, a representative governing board, and a broadening of the region's definition--are aimed at meeting these objections. The Commission believes they are reasonable responses to valid concerns of regional parties of interest.

COMBINATION

A final alternative could involve some combination of the options described above: New York City as a regional supplier, the State as a regional supplier, and a new regional corporation as a regional agency.

IMPLEMENTING AGENCY

Description

If it is not possible to go ahead with any of these options in the next session of the Legislature, an interim state development and implementing agency should be established to continue the pursuit of a workable compromise.

The agency would be created in the executive department and would not have any time restrictions placed on it. Rather, its life would extend at least until a regional water supply arrangement for Southeastern New York were established. The agency would be representative of the region's parties of interest, and its commissioners would be apportioned among New York City, the rest of the region's service area, and outside source areas (including the potential new source area of Herkimer-Oneida counties).

Specifically, the structure would be similar to that recommended previously for other regional arrangements: 15 commissioners, including eight representing New York City, two representing Long Island, one representing Westchester, one representing Putnam, Dutchess and Ulster counties, one representing Rockland and Orange counties, one representing Delaware, Sullivan and Schoharie counties, and one representing Herkimer and Oneida counties. Three-quarters majorities would be required on substantive policy questions, including, obviously, the ultimate regional arrangement.

This development and implementing agency would be charged with the responsibility to formulate an acceptable regional water supply arrangement so that development of new sources of supply and other needed action can proceed in a timely fashion. Once such an arrangement were arrived at, the agency, if necessary, could perform the preliminary activities to assure an orderly transition from the existing arrangement to the new.

Financing

This state agency would require annual appropriations from the state budget. In the first year, this probably would have to be about \$250,000.

Evaluation

Creation of an interim state development and implementing agency should be the minimum response of the next session of the Legislature to assure an adequate future water supply for Southeastern New York. At the same time, it should not be considered a tool of procrastination. Procrastination does not fit into a water supply development schedule that includes lead times of between ten and fifteen years before water from new sources actually begins to flow.

real or personal property, or any interest therein necessary, convenient or desirable to carry out the purpose of this title and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time required by it in the exercise of its powers;

h. to appoint such officers and employees as it may require for the performance of its duties, and to fix and determine their qualifications, duties and compensation and to retain or employ counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice;

i. to make plans, surveys, and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the corporation and to prepare recommendations in regard thereto;

j. to enter upon such lands, waters, or premises as in the judgment of the corporation may be necessary, convenient or desirable for the purpose of making surveys, soundings, borings and examinations to accomplish any purpose authorized by this title, the corporation being liable for actual damage done;

k. to conduct investigations and hearings in the furtherance of its general purposes, and in aid thereof to have access to any books, records or papers relevant thereto; and if any person whose testimony shall be required for the proper performance of the duties of the corporation shall fail or refuse to aid or assist the corporation in the conduct of any investigation or hearing, or to produce any relevant books, records or other papers, the corporation is authorized to apply for process of subpoena, to issue out of any court of general original jurisdiction whose process can reach such person, upon due cause shown;

l. to acquire municipal bonds and notes and bonds and notes of certain state agencies and to make loan commitments and loans to municipalities

York and the corporation shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by this title.

§ 1121. General powers of the corporation. 1. The general powers of the corporation shall be as follows:

- a. to sue and be sued;*
- b. to have a seal and alter same at pleasure;*
- c. to borrow money and issue negotiable notes, bonds or other obligations and to provide for the rights of the holders thereof;*
- d. to invest any funds held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the corporation, in obligations of the state or the United States of America, in obligations the principal and interest of which are guaranteed by the state or the United States of America, or in deposits with such banks or trust companies as may be designated by the corporation. Each such bank or trust company deposit shall be continuously and fully secured by direct obligations of the state or the United States of America, of a market value equal at all times to the amount of the deposit, and all banks and trust companies are hereby authorized to give such security;*
- e. To make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under this title;*
- f. to enter into contracts and leases and to execute all instruments necessary or convenient or desirable for the purposes of the corporation or to carry out any powers expressly given it in this title;*
- g. to acquire, purchase, hold, lease as lessee, dispose of and use any*

FEDERAL AID

Description

The Federal government, spurred by the drought of the mid-Sixties, has moved vigorously into the water supply field. The Water Resources Planning Act of 1965 authorized the U. S. Army Corps of Engineers to study water supply in the Northeastern United States and to make recommendations for solving any problems. One of its main areas of study is the New York Metropolitan Area, including northern New Jersey and western Connecticut.

In October 1974, the Corps staff studying the metropolitan area presented to state agencies in New York, New Jersey and Connecticut a draft of its findings and recommendations for water supply projects in the New York Metropolitan Area. The recommended projects for Southeastern New York are similar to those of the Southeast Water Supply Commission, focusing on the Hudson River in general and including flood-skimming and flow regulation in particular.

On the other hand, there are discrepancies between the Corps' draft report and the Commission's findings in timing, projected deficits and yields. The Corps' projected deficits for Southeastern New York are 30 percent to 40 percent greater than the Commission's. As a result, flow regulation projects are more extensive than the Commission's. At the same time, the Corps staff downplays the potential savings of universal metering, with a projection one-half that of the Commission. It advocates a pilot metering project in New York City to test the effectiveness of metering.

Throughout its draft report, the Corps maintains a strong interstate flavor and examines individual projects which would share Hudson River water in upstate New York with Northern New Jersey. One such project calls for a taking from the west side of the Hudson River (at West Park) and transporting the water to Great Notch, New Jersey. A second suggests a trade-off whereby water in the planned Tocks Island Reservoir on the Delaware River in New Jersey would be released to provide some of the downstream flow regulation required of New York City; and the City in turn would pipe water from its Kensico Reservoir to Great Notch.

These interstate projects may not be necessary according to the Corps, if Tocks Island Reservoir--the keystone of the Corps' plan--is constructed to provide Northern New Jersey with 300 MGD of Delaware River water. In fact, the Corps staff's "preferred regional plan" recommends that each of the three states

in the region carry out its individual state plan. For New York, the state plan is in substance the plan recommended by the Southeast Water Supply Commission. The Corps staff's preferred plan is as follows:

Table 3
PREFERRED PLAN
(Draft)

AREA	PROJECT	YIELD (mgd)		
		1980	2000	2020
New York	Hudson River-Hyde Park w/ Ashokan tunnel	200	530	900
	Metering	-	-	125
	Reuse (Long Island)	30	40	50
	TOTAL	230	570	1075
New Jersey	New Jersey State Plan:			
	1-Raritan Mainstem	80	80	80
	2-Confluence Reservoir	-	50	50
	Six mile run	-	38	38
	Round Valley Expansion	-	27	27
	Delaware Diversion-Tocks Island	-	-	300
	Monmouth Co. Develop.	-	-	65
	Reuse	-	23	40
	TOTAL	80	218	600
Connecticut	Connecticut State Plan	-	-	100

Financing

The financing arrangements suggested by the Corps' New York Metropolitan Area staff in its draft are enticing. The staff advocates modifications in the Water Supply Act of 1958 which would:

- (1) permit 100 percent project cost allocations to water supply (eliminating the current 30 percent limit); and
- (2) revise repayment provisions such that local interests, through the state government, would pay for water supply capability when and so needed, without any requirements to complete the repayment of the water supply costs of a project within a specified time limit.

The Federal government thus would in effect put up all the risk capital of a major regional water supply project and play the role of "insurer" of local

Development of such projects shall include the development of any withdrawal, treatment and transmission facilities necessarily related thereto.

4. It is hereby found and declared that such purposes are in all respects for the benefit of the people of the state of New (continued to next page)

adequate facilities for the transmission of water from supply areas to the service areas of the corporation. In accordance with the foregoing general purposes, the purposes of the corporation shall be the planning, financing, construction, maintenance, and operation of water works, water facilities and water management facilities, and any and all facilities necessarily related thereto.

2. In addition to the general purposes herein set forth, the corporation shall have as a specific purpose the acquisition of the water supply source and transmission facilities of the department of water resources of the city of New York located outside the corporate limits of New York City except for the Kensico Reservoir and the transmission facilities from said reservoir to the corporate limits of the city of New York, and the operation and expansion of the water supply facilities in order to provide water on a wholesale basis to the district in a manner which will enable the operations thereof to be self-sustaining; and the corporation shall expand the water supply capabilities of the system by constructing and operating new water supply facilities to be integrated with the existing system.

3. The corporation shall be limited with respect to the development of any new water supply for the district. The corporation shall be limited to the development of the following projects for the purpose of increasing the water supply of the district:

- a. a taking of water from the Hudson River;*
- b. expansion of the Hinckley Reservoir;*
- c. provision for interchange of surface water from upstate sources of the corporation with groundwater sources located in the portion of the district situated on Long Island.*

water supply. Once completed, the project would be operated by a state agency. The principal target of this scheme is construction of the Tocks Island Dam, but construction of other reservoirs, such as Hinckley, would also be considered if they were deemed to be "in the Federal interest."

Evaluation

On a technical level, there is broad agreement between the Corps staff and the Commission as to the preferred new source of water for Southeastern New York (the Hudson River) and the projects to develop it (flood-skimming and flow regulation.) There are discrepancies in timing and yields; here the Commission is satisfied that its projections of water supply deficit are reasonable and that, if anything, its estimate of potential savings from universal metering is conservative. In fact, the efficiency of metering has been so well demonstrated in urban areas of all types that the Commission sees no purpose in the pilot metering project proposed by the Corps staff. Universal metering should be undertaken on a full scale as soon as possible.

Taken as a whole, however, the Corps' technical recommendations and those of the Commission are compatible.

On a legal basis, there are serious questions as to whether New Jersey has an inherent right to Hudson River water from New York. The implication that New Jersey does have this right pervades much of the draft report, although the preferred regional plan does not include the transport of Hudson River water from New York to New Jersey. This exportation would gain more prominence should the Tocks Island proposal ultimately be shelved, increasing pressure on New Jersey to turn to the Hudson. Not only would this arouse opposition from upstate New York source areas; it would also require decisions as to the kind of authority (e.g., an interstate compact) that would be necessary for New Jersey use of Hudson River water.

On an institutional level, no new regional arrangement adopted by Southeastern New York--a corporation, New York City, or the State as a regional supplier--should preclude the possibility of Federal assistance. Fortunately, since the preferred water supply projects of the Corps staff and the Southeast Water Supply Commission are similar, the task of plugging Federal construction assistance into any of the proposed Southeastern New York plans should be a relatively easy task.

Federal assistance, by easing financial questions which confront to some extent each alternative institutional arrangement, probably would speed a new regional arrangement in Southeastern New York. But with the assistance would come certain conditions. Once condition would almost certainly mandate interstate distribution of water from, for example, the Hudson River if it became necessary from a Federal point of view.

Prospects of Federal assistance, of course, are entirely speculative, and it is imperative that the region not become dependent upon the expectation that it will become available. Congressional and Presidential disenchantment with inflationary spending measures, and the realization that assistance for the New York Metropolitan Area could lead to pressures for assistance in other urban areas, may mitigate against the Corps plan.

provided, however, a director who holds such other public office or employment shall receive no additional compensation for services rendered pursuant to this title, but shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of such services.

6. The governor may remove any director for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him and an opportunity to be heard, in person or by counsel in his defense, upon not less than ten days' notice. If any director shall be so removed, the governor shall file in the office of the department of state a complete statement of charges made against such director, and his findings thereon, together with a complete record of the proceedings.

7. The corporation shall continue so long as it shall have bonds or other obligations outstanding and until its existence shall be terminated by law. Upon the termination of the existence of the corporation, all its rights and properties shall pass to and be vested in the state.

s 1119. Area of operations. The corporation shall be concerned with and is authorized to act with respect to its powers, duties and the purposes of this title throughout the district and in areas outside the district whenever the purposes of this title require such action.

§ 1120. Purposes of the corporation. 1. The general purpose of the corporation shall be the development of an adequate and continuous water supply for the district, and to provide

that the aggregate of such per diem allowance to any one director in any one fiscal year of the corporation shall not exceed the sum of five thousand dollars.

3. Such directors other than president may engage in private employment, or in a profession or business, subject to the limitation contained in sections seventy-three and seventy-four of the public officers law. The corporation shall, for the purposes of sections seventy-three and seventy-four of the public officers law, be a "state agency", and such directors shall be "officers" of the corporation for the purposes of said sections.

4. Twelve directors of the corporation shall constitute a quorum for the transaction of any business or the exercise of any power of the corporation. For the transaction of any business or the exercise of any power of the corporation the corporation shall have power to act by a vote of seventy-five percentum of the directors present at any meeting at which a quorum is in attendance. The corporation may delegate to one or more of its directors, or its officers, agents and employees, such powers and duties as it may deem proper.

5. Notwithstanding any inconsistent provisions of this or any other law, general, special or local, no officer or employee of the state, or of any civil division thereof, shall be deemed to have forfeited or shall forfeit his office or employment or any benefits provided under the retirement and social security law by reason of his acceptance of membership on the corporation,

OTHER LEGISLATION

The original legislation (S.9611-A.11697) incorporated into the bill with the proposed regional corporation other institutional and conservation provisions. These included universal metering, the requirement of environmental feasibility reports for new sources of water supply and new works, authorization for the State Department of Environmental Conservation to set stream release schedules below impoundments in the study area, and prohibition of new private water and sewage works corporation.

UNIVERSAL METERING

The Commission believes that universal metering, which is lacking primarily in New York City, could save up to 240 million gallons of water or more a day by 1985. Moreover, universal metering is a technical pre-condition to other conservation measures such as leakage control and pricing, and a political pre-condition to gaining permission to develop new sources of water upstate. Thus, this provision which amends the state's environmental conservation law, is inherent in bill establishing the regional corporation and alternative bills establishing other regional arrangements. (However, metering is no longer made a pre-condition for sewage treatment plant assistance.)

Universal metering is considered so important that, should the legislature be unable to decide on the establishment of a new regional water supply arrangement, metering should be acted on separately.

ENVIRONMENTAL FEASIBILITY REPORTS

The requirement of environmental feasibility reports for new sources of water supply and new works is introduced as an amendment to the state's environmental conservation law. It is unchanged from S.9611-A.11697, and also accompanies alternative bills establishing other regional arrangements.

STREAM RELEASES

The regulation of release from impoundments downstream is an important conservation and recreation matter. This amendment to the state's environmental conservation law, mandating the State Department of Environmental Conservation to formulate release schedules, has been separated out of the corporation bill into a bill of its own, but the actual provisions remain unchanged.

PRIVATE WATER AND SEWAGE WORKS

The original bill prohibiting creation of new private water and sewage corporations was aimed at the proliferation of small water supply and sewage systems associated with new subdivisions. These have in the past been the subject of numerous complaints, both in terms of water quantity and water quality.

However, during the Commission staff's recent conferences throughout the region with local and county officials, as well as with the Public Service Commission, it appears that existing agencies are developing means of controlling new developer systems. Two towns in Putnam County, for example, where developer systems posed serious difficulties, require the developer to petition the town board for a town water district before any construction is allowed, and the developer must agree to turn the water supply system over to the town for one dollar at the option of the town. In Rockland County, it is the policy of the County Health Department to closely examine the possibility of a subdivider hooking up his proposed water supply system with the major system in the county before giving its approval. This major system, the Spring Valley Water Co., often works with the developer of a new subdivision to have the water supply system constructed in a manner such that a hook-up or future acquisition of the system is facilitated. Orange County also has concerned itself with new developer systems.

In addition, the Public Service Commission claims that service problems with new small water companies have not been severe since the PSC was given some regulatory authority over them in 1971. At the same time, fears were expressed by both state and local officials that the prohibition of new private developer systems might be misused by some municipalities as a weapon to stop growth.

As a result of this review, the Commission is dropping its proposal to ban new private developer systems. Instead, to encourage a continuation of the trend toward local control over such systems, a separate bill has been prepared. It requires a subdivider to receive certification from the county planning agency that his proposed water supply system conforms to the county resource (or equivalent) plan.

EXCESS RELEASE REQUIREMENT

Beyond the legislative activity recommended by the Commission, judicial action should be pursued to eliminate the excess release requirements currently imposed on the City of New York. This requirement grew out of Supreme Court decrees in 1931 and 1954, following the City's impoundment and diversion of

each such county executive, county legislature or board of supervisors to provide not more than two such nominations.

(i.) The directors shall serve for a term of six years each; provided, however, that of the directors first appointed, three of the directors appointed by the Mayor of the City of New York shall serve for terms of four years respectively, from January first next succeeding their appointment; two of the directors appointed by the Mayor of the City of New York shall serve for terms of two years respectively, from January first next succeeding their appointments; two of the directors appointed by the governor shall serve for terms of four years respectively, from January first next succeeding their appointments; three of the directors appointed by the governor shall serve for terms of two years respectively, from January first next succeeding their appointments. Any vacancy occurring otherwise than by expiration of terms shall be filled in the same manner as the original appointment for the balance of the unexpired term. The governor shall appoint a president of the corporation, to be chosen from among the fifteen directors, who shall serve as president at the pleasure of the governor.

2. The president shall be paid the salary prescribed by the corporation for such a position. Each director, including the president, shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties and, except in the case of the president, a per diem allowance of one hundred dollars when as such director, provided

to the governor by the county executive of Nassau County;

(c.) One director shall represent the County of Suffolk and shall be appointed by the governor from a list of not more than three nominations to be provided to the governor by the county executive of Suffolk County.

(d.) One director shall represent the County of Westchester and shall be appointed by the governor from a list of not more than three nominations to be provided to the governor by the county executive of Westchester County.

(e.) One director shall represent the Counties of Putnam, Dutchess and Ulster, and shall be appointed by the governor from a list of not more than six nominations to be provided by the county executive or county legislature, as the case may be, of each respective county, each such county executive or county legislature to provide not more than two such nominations.

(f.) One director shall represent the Counties of Rockland and Orange and shall be appointed by the governor from a list of not more than four nominations to be provided by the county executive or county legislature, as the case may be, of each respective county, each such county executive or county legislature to provide not more than two such nominations.

(g.) One director shall represent the current source areas of Delaware, Sullivan and Schoharie Counties and shall be appointed by the governor from a list of not more than six nominations to be provided by the county executive, county legislature or board of supervisors, as the case may be, of each respective county, each such county executive, county legislature or board of supervisors to provide not more than two such nominations.

(h.) One director shall represent the proposed source areas of Herkimer and Oneida Counties, and shall be appointed by the governor from a list of not more than four nominations to be provided by the county executive, county legislature or, board of supervisors, as the case may be, of each respective county,

Delaware River water. One of the conditions placed upon the City's use of the Delaware for water supply was the requirement to release downstream a quantity of water equal to 83 per cent of the difference between its annual water consumption from all sources and the safe yield (1,665 MGD, according to the 1954 decree) of its total gravity supplies. This excess release requirement is counter-productive to any water conservation program employed in New York City, because 83 per cent of the "saved" water must be released downstream. And, in any case, the drought of the Sixties indicated a safe yield of 1,279 MGD rather than the 1,665 MGD employed by the 1954 decree. This should be used as a basis for a petition, either to the Delaware River Basin Commission which has institutionalized the 1954 decree or to the courts, to eliminate the excess release requirements.

SUMMARY AND CONCLUSIONS

Out of discussions with parties of interest throughout the Southeastern New York Region have emerged several broad points of agreement. These include the need for a new source of regional water supply (the Hudson River) the necessity to conserve existing supplies (primarily through metering) and to administer water supply facilities in an environmentally sensitive fashion, and the outdated nature of existing regional water supply arrangements.

However, there is no general agreement as to the preferred new regional arrangement. Alternative new arrangements boil down to essentially three choices: New York City as regional supplier, the State as regional supplier, or a public benefit corporation as regional supplier. The Commission's original recommendation, incorporated into the study bill S.9611-A.11697, was to create a public benefit corporation to assume control of existing regional facilities and develop new ones. This study bill has now been extensively revised in order to accomplish, among other things, the following:

- (1) a precise description of the proposed corporation's governing board, to be representative of New York City, the various service areas in the region, and source areas;
- (2) restraints on the corporation's powers, including purchase and condemnation powers, rate-setting powers, and its discretionary authority vis a vis selection of water supply projects; and
- (3) assurances for source areas that their fiscal bases will remain stable once New York City's upstate facilities are transferred to the corporation.

If the region as a whole opts for New York City as regional supplier rather than a new corporation, extensive revision of the Water Supply Act of 1905 will be necessary to assure a representative policy-making structure and to transform the City into a genuine regional supplier. However, this option probably would require a home rule request by the City.

Whatever institutional arrangement is arrived at, it should leave itself open to the possibility of Federal assistance such as that recently suggested by the Army Corps of Engineers Northeast Water Supply Study.

If the region and the State Legislature can come to no agreement on a new regional water supply arrangement in the next legislature session, there should be created in the executive department a permanent state development and implementing agency to continue the pursuit of a workable arrangement.

treatment and transmission of water, water transmission lines, pumping stations and all of the necessary appurtenances incidental thereto, including reservoirs, dams and other impoundments.

o. Water facility. The term "water facility" means buildings, lands, rights in lands, original furnishings, fixtures, equipment or apparatus, or the replacement of such furnishings, fixtures, equipment or apparatus, which are acquired, constructed or reconstructed in connection with a water supply system or water transmission system, or are necessarily related thereto; provided however that the foregoing definition shall not include any public or private local water distribution system.

p. Source area. The term "source area" means the county or counties wherein are located the sources of water supply owned and operated by the corporation.

§1117. Southeastern New York water supply service district.

There is hereby recognized, created and established a geographical area or district consisting of the city of New York and the counties of Dutchess, Putnam, Orange, Westchester, Rockland, Ulster, Delaware, Sullivan, Suffolk, and Nassau, which for the purposes of this article shall be known as the southeastern New York water service district.

§1118. Southeastern New York water facilities corporation.

1. There is hereby created the southeastern New York water supply facilities corporation. The corporation shall be a body corporate and politic constituting a public benefit corporation. Its membership shall consist of fifteen directors, such membership to be representative of the district and source areas. The directors shall be appointed in the following manner:

(a.) Eight directors shall represent the City of New York and shall be appointed by the Mayor of the City of New York;

(b.) One director shall represent the county of Nassau and shall be appointed by the governor from a list of not more than three nominations to be provided

h. Municipality. The term "municipality" means any county, city, town, village district corporation, county or town improvement district and water authority.

i. Person. The term "person" means any person, including individuals, firms partnerships, associations or corporations organized or existing under the laws of the state of New York or any other state.

j. Project. The term "project" means any water works, water facilities or water management facilities which the corporation is authorized to plan, finance, construct, operate or maintain under the provisions of this title including all buildings, systems, facilities, appurtenances, machinery and equipment which the corporation deems necessary for the operation of the project, including the site therefor, together with all property, rights, easements and interests, either on or off such site, which may be required for the operation of the project.

k. Real property. The term "real property" means lands, structures, franchises and interests in land, waters, lands under water, riparian rights and any and all things and rights included within said term and includes not only fees simple absolute but also any and all lesser interests including but not limited to easements, rights of way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

l. State. The term "state" means the state of New York.

m. State agency. The term "state agency" means any officer, authority, corporation, department, board, commission, bureau, division, public benefit corporation, council, agency, agency or instrumentality of the state.

n. Water management facility. The term "water management facility" means a facility for the purpose of providing a public water supply including, without limiting the generality of the foregoing, facilities for the development,

In terms of related water supply legislation, mandated universal metering and environmental feasibility reports should accompany legislation creating any new institutional arrangement. The Department of Environmental Conservation should be given the authority and responsibility to establish schedules for stream releases below impoundments in the region.

Finally, in a major revision of the Commission's legislative program, the proposed prohibition of new private water and sewage works has been dropped in favor of a bill requiring certification by county planning agencies that water systems for new housing developments conform with county resource plans.

engineering and architectural surveys, plans and specifications, the cost of consultants' and legal services, other expenses necessary or incident to the construction of such project and the financing of the construction thereof, including, the amount authorized in the resolution of the corporation providing for the issuance of bonds to be paid into any special fund from the proceeds of such bonds and the financing of the placing of any project in operation, including reimbursement to any municipality, state agency, the state, the United States government, or any other person for expenditures, made with the prior approval of the corporation that would be costs of the project hereunder had they been made directly by the corporation.

e. District. The term "district" means the southeastern New York water supply service district as established by this title.

f. Governing body. The term "governing body" means

(1) In the case of a county, city, town, village, county or town improvement district, the county legislature, the board of supervisors, board of aldermen, common council, commission, town board, board of trustees or other elective body or board now or hereafter vested by state statute, charter or other law with jurisdiction to initiate and adopt local laws or ordinances, whether or not such local laws or ordinances require the approval of the chief executive officer or other official or body to become effective;

(2) In the case of a district corporation, the board vested with the management and control of the district corporation; and

(3) In the case of a water or sewer authority now existing in a county, city, or other municipality, the members of such authority;

g. "Municipal bonds and notes" shall mean the bonds and notes authorized and issued pursuant to the local finance law or other act of the legislature by any municipality for the purposes of financing the construction of a water supply system, water management facility or water facility.

1135. *Actions against the corporation.*

1136. *Title not affected if in part unconstitutional or ineffective.*

1137. *Rights and remedies preserved.*

§ 1115. *Short title. This title may be cited as the "Southeastern New York Water Facilities Act."*

§ 1116. *Definitions. As used or referred to in this article, unless a different meaning clearly appears from the context, the following terms shall have the meanings as herein set forth:*

a. *Bonds. The term "bonds" means the bonds issued by the corporation pursuant to this title.*

b. *Construction. The term "construction" means the erection, building, acquisition, alteration, reconstruction, improvement, enlargement or extension of water works, water facilities, and water management facilities, as the case may be; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specification, procedures, and other actions necessary thereto.*

c. *Corporation. The term "corporation" means the southeastern New York water facilities corporation created by this title.*

d. *Cost. The term "cost" as applied to any project shall include, but not be limited to, cost of construction of the project, the cost of acquisition of all property, including real property, improved and unimproved, and all other property, tangible and intangible, the cost of demolishing, removing or re-locating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the costs of all systems, facilities, machinery and equipment, financing charges, interest prior to and during construction, the cost of*

A P P E N D I X

The following is the re-drafted version of S.9611-A.11697, which proposed the creation of a public benefit corporation to construct and operate a regional water supply system (existing and new) for Southeastern New York. The principal revisions in the bill are discussed in a previous section of this report. Alternative bills to implement the other possible regional arrangements (New York City or the State as regional supplier) also will be introduced to the 1975 session of the Legislature in order to provide the region with the broadest possible choice.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Article five of the public authorities law is hereby amended by adding thereto a new title, to be title six, to read as follows:

TITLE 6

SOUTHEASTERN NEW YORK WATER FACILITIES CORPORATION

Section 1115. Short title.

1116. Definitions.

1117. Southeastern New York water supply district.

1118. Southeastern New York water facilities corporation.

1119. Areas of operations.

1120. Purposes of the corporation.

1121. General powers of the corporation.

1122. Special powers of the corporation.

*1123. Transfer to corporation of certain water supply facilities
of the city of New York.*

1124. Acquisition and disposition of real property.

1125. Construction contracts.

1126. Cooperation and assistance of other agencies.

1127. Transfer of officers and employees.

1128. Notes and bonds of the corporation.

1129. Reserve funds and appropriations.

1130. Agreement of the state.

1131. Right of state to require redemption bonds.

1132. Remedies of noteholders and bondholders.

1133. Notes and bonds as legal investment.

1134. Exemption from taxation; payments in lieu of taxes.